



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2015-0609; FRL-9946-84-Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1997 8-hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a redesignation substitute and make a finding of attainment for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area). The redesignation substitute demonstration indicates that the area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. Final approval of the redesignation substitute will result in the area no longer being subject to any remaining applicable anti-backsliding requirements and the nonattainment new source review (NNSR) requirements associated with the revoked NAAQS. In general, final approval of the redesignation substitute would allow Texas to seek to revise the Texas SIP for the area to remove anti-backsliding measures from the active portion of its SIP if it can demonstrate, pursuant to Clean Air Act (CAA) section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. However, the EPA believes that in this instance, Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the HGB area.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0609, at <http://www.regulations.gov> or via email to Donaldson.tracie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Tracie Donaldson, (214) 665-6633, Donaldson.tracie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665-6633, *Donaldson.tracie@epa.gov*. To inspect the hard copy materials, please contact Tracie Donaldson.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period (44 FR 8202, February 8, 1979). Primary standards are set to protect human health while secondary standards are set to protect public welfare. In 1997 we revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (62 FR 38856, July 18, 1997). In 2008, we revised the primary and secondary ozone NAAQS to 0.075 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). Ozone nonattainment areas are classified at the time of designation based on the area’s design value (77 FR 30088, 30091, May 21, 2012 and CAA section 181(a)(1)). The design value is calculated from air quality data from the area for the 3 years preceding designation. The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a “lower” classification have design values that are closer to the NAAQS than areas with a “higher” classification.

The EPA revoked the 1997 ozone NAAQS for all purposes effective April 6, 2015 (80 FR 12264, 12296, March 6, 2015). In that rule, the EPA established a regulatory list of “applicable requirements” that would apply as anti-backsliding requirements for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS. *Id.* at 12298-99. The rule provides

that an area initially subject to the anti-backsliding obligations for a revoked NAAQS will remain so until we approve (1) a redesignation to attainment for the area for the 2008 ozone NAAQS or (2) a “redesignation substitute”, which serves as a successor to redesignation to attainment, for which the area would have been eligible were it not for revocation. *Id.* at 12304. As explained more fully in the preambles to the proposed and final rules, the redesignation substitute demonstration must show that the area (1) has attained the revoked NAAQS due to permanent and enforceable emission reductions and (2) will maintain that revoked NAAQS for 10 years from the date of EPA’s approval of the showing. *See id.* at 12303-306; 78 FR 34178, 34222-223. The rule also provides that if, after notice and comment rulemaking, we approve a redesignation substitute for a revoked NAAQS, the state may request to revise its SIP to revise or remove provisions for NNSR for that revoked NAAQS and that other anti-backsliding obligations for that revoked NAAQS be shifted to contingency measures, provided that such action is consistent with CAA sections 110(l) and 193 (40 CFR 51.1105(b)(2)).

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties in Texas. On April 30, 2004, the EPA designated and classified the 8-county HGB as a Moderate nonattainment area under the 1997 ozone standard with an attainment date of no later than June 15, 2010 (see 69 FR 23858 and 69 FR 23951). On June 15, 2007, we received a request from the Governor of Texas seeking voluntary reclassification of the HGB area from a Moderate nonattainment area to a Severe nonattainment area under the 1997 ozone standard, which we approved on October 1, 2008 (73 FR 56983).¹ Subsequently, the State submitted the Reasonable Further Progress (RFP) and Attainment

¹ The attainment date for the HGB Severe nonattainment area was as expeditiously as practicable, but not later than June 15, 2019.

Demonstration (AD) SIPs for the HGB Severe area under the 1997 ozone standard. These RFP and AD SIPs were approved on January 2, 2014 (see 79 FR 51 and 79 FR 57, respectively).

Texas provided the “Redesignation Substitute Report for the Houston-Galveston-Brazoria 1997 Eight-Hour Standard Nonattainment Area” (redesignation substitute report) to EPA on August 18, 2015. The submission also requested that EPA concur that the NNSR provisions relevant to the revoked 1997 ozone NAAQS would no longer apply. The report is available through www.regulations.gov (e-docket EPA-R06-OAR-2015-0609).

II. EPA’s Evaluation of the Houston Redesignation Substitute Report

To determine whether we should approve the 1997 8-hour ozone redesignation substitute for the HGB area, we evaluated the redesignation substitute report provided by Texas and the ambient ozone data for the area in the EPA Air Quality System (AQS) database. To evaluate the report we used the applicable portions of our September 4, 1992 memo, “Procedures for Processing Requests to Redesignate Areas to Attainment” (www.epa.gov/ttn/oarpg/t5/memoranda/redesignmem090492.pdf). A detailed discussion of our evaluation can be found in the Technical Support Document (TSD) for this action. The TSD can be accessed through www.regulations.gov (e-docket EPA-R06-OAR-2015-0609).

A. Has the area attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions?

In a previous action we found that the HGB area had attained the 1997 8-hour ozone standard (80 FR 81466). Ambient air quality found in the AQS database shows that the HGB area attained the 1997 8-hour ozone standard at the end of 2014, and preliminary data from 2015 indicate that the area has continued to maintain the standard (Table 1).

Table 1. 8-Hour Design Values for the HGB Area

Years	8-Hour Ozone Design Value
2012-2014	80 ppb
Preliminary 2013-2015	80 ppb

In 2014, all monitors in the HGB area reported 8-hour ozone values of 80 ppb or less. A more detailed table of 8-hour ozone values for the HGB monitors can be found in the TSD.

The HGB area redesignation substitute report provides information on emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and regulations that reduced these emissions. NO_x and VOCs are ozone precursors. Texas identified control measures implemented as part of its 1-hour ozone attainment demonstration SIP and its 1997 ozone attainment demonstration SIP that led to permanent and enforceable emission reductions. The 1-hour ozone attainment demonstration SIP was approved on September 6, 2006 (71 FR 52670). The 1997 ozone attainment demonstration SIP was approved on January 2, 2014 (79 FR 57). Additionally, we have approved SIPs for the HGB area that document continuous emissions reductions due to permanent and enforceable measures for the 1-hour and 1997 8-hour ozone standards (70 FR 7407, February 14, 2005; 74 FR 18298, April 22, 2009; 79 FR 51, January 2, 2014). The TCEQ has implemented stringent and innovative regulations that address emissions of NO_x and VOCs. These include, but are not limited to:

- Highly Reactive VOC Emissions Cap and Trade (HECT) implemented in 2007.

This program affects cooling towers, process vents and flares and establishes an emission limit with a cap and trade in Harris County. The seven perimeter counties are subject to permit allowable limits and monitoring requirements.

- More stringent leak detection and repair (LDAR) requirements implemented in 2004.
- NO_x Mass Emissions Cap and Trade (MECT) Program phased in through April 2007 results in an overall 80% reduction from existing industrial sources and utility power plants.
- Vehicle Inspection and Maintenance implemented in Harris County in 2002 and then expanded to Brazoria, Fort Bend, Galveston and Montgomery Counties.
- Federal Area and Non-road emissions limits are being phased in through 2018.
- Federal On-road emissions limits are being phased in through 2025.

Given our previous actions approving Texas SIPs pertaining to permanent and enforceable measures, we agree with Texas' conclusion that the area has attained the 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions. Many others are listed and a more detailed review can be found in the TSD.

B. Will the area maintain the revoked 1997 8-hour ozone NAAQS for 10 years from the date of our approval?

To demonstrate that the HGB area will maintain the revoked 1997 8-hour ozone NAAQS for 10 years from the date of our approval of the redesignation substitute, the Texas report provided information on projected emissions of ozone precursors (Tables 2 and 3). The emission projections show that (1) NO_x emissions will continue to decrease through 2028 and (2) VOC emissions will remain relatively steady through 2028 with an overall increase of 8.4 tpd or 1.4%. We reviewed this information and agree with the conclusion that the area will maintain the revoked 1997 8-hour ozone NAAQS for 10 years from the date of our approval. Based on

photochemical modeling analyses showing that the formation of ozone in the HGB area is more sensitive to NO_x than to VOC emissions, the small increase in VOC emissions during the 10-year maintenance period is expected to be more than offset by the 39% decrease in NO_x emissions during this same period. More detail on our review can be found in the TSD.

Table 2: NO_x Emission Projections (tons per day)

Category	2012	2014	2017	2020	2023	2026	2028
Point Sources	98.5	119.67	127.39	127.71	128.03	128.35	128.56
Area Sources	21.91	22.52	23.23	23.61	23.47	23.50	23.59
On-Road Mobile Sources	159.08	124.64	82.96	61.06	48.94	40.24	37.04
Non-Road Mobile Sources	132.24	100.90	87.32	76.34	69.91	64.78	61.62
Total	411.73	367.73	320.90	288.72	270.35	256.87	250.81

Table 3: VOC Emission Projections (tons per day)

Category	2012	2014	2017	2020	2023	2026	2028
Point Sources	84.06	110.72	115.02	115.65	116.26	116.94	117.41
Area Sources	310.07	317.75	328.20	335.07	337.81	341.16	344.75
On-Road Mobile Sources	74.51	61.48	47.36	40.38	36.12	31.71	28.99
Non-Road Mobile Sources	44.01	38.81	33.51	30.89	30.05	29.84	29.93
Total	512.65	528.76	524.09	521.99	520.24	519.65	521.08

III. Proposed Action

Based on the CAA's criteria for redesignation to attainment (CAA section 107(d)(3)(E)) and the regulation providing for a redesignation substitute (40 CFR 51.1105(b)), EPA is proposing to approve the redesignation substitute for the HGB area for the revoked 1997 8-hour

ozone NAAQS and make a finding of attainment based on our determination that the demonstration provided by the State of Texas shows that the HGB area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. If EPA finalizes approval of the redesignation substitute, the HGB area would no longer be subject to any remaining applicable anti-backsliding requirements and the NNSR requirements associated with the revoked NAAQS. It would also allow the state to request a SIP revision to shift anti-backsliding obligations for the revoked ozone NAAQS to contingency measures provided that such action is consistent with CAA sections 110(1) and 193 (if applicable).

Texas's redesignation substitute report also requested that EPA concur that the NNSR provisions relevant to the revoked 1997 ozone NAAQS would no longer apply. As explained previously, if we approve a redesignation substitute, the state may request to revise its SIP to revise or remove provisions for NNSR for the revoked standard, provided that such action is consistent with CAA sections 110(1) and 193 (40 CFR 51.1105(b)(2)). However, the EPA believes that in this instance, Texas does not need to revise its SIP to alter some of the provisions for NNSR effective in the HGB area. The EPA reads Texas's NNSR SIP designations and classifications (and thus the related major source thresholds and offset ratios) to adjust as 40 CFR part 81 is updated and does not require further action by Texas if EPA were to finalize the redesignation substitute proposed here. This is explained in detail in Section D of the TSD. Because the HGB area is classified as Marginal nonattainment for the 2008 ozone NAAQS (as of the date of this Proposal), if the EPA finalizes this redesignation substitute, we believe that Texas's NNSR program would automatically change to requirements applicable for marginal

areas in accordance with the HGB area classification for the 2008 ozone NAAQS for newly permitted sources. We note that finalization of this redesignation substitute does not relieve sources in the area of their obligations under previously established permit conditions.²

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely proposes to approve a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1997 8-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duties, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among

² See Final Implementation Rule for 2008 Ozone Standard, 80 FR 12264, at 12299, footnote 83 and at 12304, footnote 91.

the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1997 8-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this proposed rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Additionally, the proposed rule is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 13, 2016.

Ron Curry,
Regional Administrator, Region 6.

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